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2 house. He visited the house, but Nauer was not present. He tried again to contact Nauer on
3 November 24 and 25.

4 II.

5 On November 27, Scarberry spoke with Nauer. Nauer stated that he knew the siding
6 being removed contained asbestos. Nauer also said the work was being done by Crest
7 Construction, whom he had hired to remodel the house. Scarberry told Nauer about the
8 restrictions on asbestos removal, and later that week mailed Nauer a copy of the PSAPCA
9 regulations on asbestos removal.

10 III.

11 On November 30, 1994, Crest Construction contacted Scarberry by telephone
12 regarding the Nauer project. Scarberry instructed Crest to follow the regulations, particularly
13 regarding keeping loose or broken asbestos material wet and not nailing through asbestos
14 shingles to install new siding over it.

15 IV

16 On or about December 10, Nauer filed a Notice of Intent to Remove or Encapsulate
17 Asbestos with PSAPCA, including a check for the \$25 fee.

18 V.

19 On December 18, Scarberry received a second citizen complaint regarding the Nauer
20 construction, and visited the site. He found Crest employees nailing through asbestos shingles.
21 He also found broken and removed asbestos shingles improperly disposed of in a pile on the
22 ground, and no evidence of wetting. He took samples of the shingle material for laboratory
23 analysis.

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2 VI.

3 The Washington State Department of Ecology lab analyzed the shingle sample, and
4 found it contained 50% chrysotile asbestos, far in excess of the 1% minimum content which
5 defines asbestos material in PSAPCA Regulation III, Article 4.02(c).

6 VII.

7 Nauer personally loaded garbage cans and bags with the asbestos material and
8 transported them, approximately one car trunk load, to a public landfill and paid \$110 to
9 dispose of it there.

10 VIII.

11 On May 24, 1994, PSAPCA issued, to Nauer and Crest Construction, Notice and
12 Order of Civil Penalty No. 7789, assessing a penalty of \$2,000. PSAPCA later offered to
13 reduce the penalty to \$500 if Nauer would agree to discontinue the asbestos practices which
14 violated PSAPCA regulations. Nauer declined to agree.

15 IX.

16 Any conclusion of law deemed to be a finding of fact is adopted as such.

17 Based on these findings, the Board makes these
18

19 CONCLUSIONS OF LAW

20 I.

21 The Board has jurisdiction under RCW 43.21B and RCW 70.94.

22 II.

23 Asbestos is a hazardous substance and is regulated by PSAPCA Regulation III,
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Article 4, a properly adopted regulation of an activated air pollution control authority under RCW 70.94.

III.

Nauer filed a Notice of Intent to Remove or Encapsulate Asbestos, but he did not file it before work began, and thus did not comply with PSAPCA III, 403(a)(1).

IV.

Nauer failed to keep all asbestos materials adequately wet until disposed of, thus violating PSAPCA III, 404(a)(4)(A).

V.

Nauer failed to contain removed materials in a controlled area until disposed of, thus violating PSAPCA III, 404(a)(4)(C).

VI.

Nauer failed to seal all asbestos materials in leak-tight containers after wetting, thus violating PSAPCA III, 405(a)(1)(B).

VII.

No exemption for residential construction exists for the provisions violated.

VIII.

Any finding of fact deemed to be a conclusion of law is adopted as such.

Based on the above findings and conclusions, the Board enters the following

ORDER

The violations cited by PSAPCA in Notice of Violation and Civil Penalty No. 7789 issued to Nauer and Crest Construction are affirmed. The penalty of \$2,000 is also affirmed. PROVIDED Nauer shall be separately and severally liable for and only for \$1,000 of the penalty.

DONE this 15th day of April, 1994, in Lacey, Washington.

POLLUTION CONTROL HEARINGS BOARD


RICHARD C. KELLEY, Presiding


ROBERT V. JENSEN, Chairman


JAMES A. TUPPER, JR., Member

P93-136F